

CHAPTER NO. 216**HOUSE BILL NO. 316****By Representatives Lynn, Maggart****Substituted for: Senate Bill No. 7****By Senators Bryson, Williams, Black**

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7, Part 5 and Title 38, Chapter 7, relative to autopsies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 38, Chapter 7, Part 1, is amended by adding the following as a new, appropriately designated section:

(a) Except as provided in subsection (c) it is an offense for the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee thereof, to contract with or grant an unauthorized person or an external entity authorization to photograph, videotape, or otherwise capture visual images, or audio recordings in whatever form of a deceased human body, a human autopsy or a body immediately prior to, during or immediately following such an autopsy.

(b) Nothing in this section shall prevent the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee thereof, from carrying out training efforts or his or her statutory responsibilities.

(c)

(1) A person is not considered "unauthorized" for purposes of subsection (a) if such person photographs, videotapes, or otherwise captures visual images, or audio recordings in whatever form of a deceased human body, human autopsy or a body immediately prior to, during or immediately following such an autopsy if it is done with the express written consent or at the direction of:

(A) The next-of-kin or personal representative of the deceased in the following order of priority:

(i) Spouse;

(ii) Any adult child;

(iii) Parents

(iv) Any sibling; or

(v) Administrator or executor, if appointed;

(B) A law enforcement agency or district attorney general, for official use only;

(C) A court order or subpoena; or

(D) An attorney representing a defendant in a criminal case where the original photographs, images or records of the chief medical examiner, a county medical examiner, coroner or pathologist designated pursuant to § 38-7-105 are not available through discovery or are otherwise not sufficient for the defense of such defendant.

(2) In determining whether the next-of-kin of the deceased is authorized to give consent, the chief medical examiner, county medical examiner, or pathologist designated pursuant to § 38-7-105 shall refer to the priority order in subsection (c)(1)(A). If a next-of-kin higher on the priority lists consents, the lack of consent of any next-of-kin lower on the list is irrelevant. If a next-of-kin higher on the priority list refuses to give consent, consent by a next-of-kin lower on the list is also irrelevant.

(d) A chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee thereof, shall incur no criminal or civil liability for permitting a person to photograph, videotape, or otherwise capture visual images, or audio recordings in whatever form of a deceased human body or a human autopsy or a body immediately prior to, during or immediately following an autopsy as a result of the consent to such conduct given by the next-of-kin if such official is presented with the written consent of a next-of-kin of the deceased who is higher on the priority list set out in subsection (c)(1)(A) than any next-of-kin who does not consent.

(e) To the extent that the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee thereof, is a covered entity under the privacy regulations promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996, nothing in this section shall be construed to preempt any provisions of those regulations that provide greater protection of the deceased's privacy than does this section.

(f)

(1) A violation of subsection (a) is a Class A misdemeanor punishable by fine only.

(2) A violation of subsection (a) is a Class A misdemeanor punishable by fine or imprisonment if the chief medical examiner, a county medical examiner, coroner or pathologist designated pursuant to § 38-7-105, or an agent or employee thereof, receives compensation or other thing of value as an inducement to violate this section.

SECTION 2. This act shall take effect on July 1, 2005, the public welfare requiring it.

PASSED: May 12, 2005


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of May 2005


PHIL BREDESEN, GOVERNOR